

IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

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|-----------------------------|---|--------------------------------|
| GWENDOLYN P. MCQUIRTER, |) | |
| et al., |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | CASE NO.: 2:07-cv-00234-MEF-WC |
| |) | |
| CITY OF MONTGOMERY, et al., |) | |
| |) | |
| Defendants. |) | |

MOTION FOR DEFAULT JUDGMENT

COMES NOW the Plaintiffs, Gwendolyn and Charles McQuirter, by and through their undersigned counsel, and respectfully moves the Court for the entry of a default judgment against Defendant City of Montgomery, for failure to plead, answer or otherwise defend this action, and as grounds therefore would show as follows:

1. This action was originally filed in the Circuit Court of Montgomery, Alabama, on February 8, 2007. (see Complaint attached as Exhibit A to Defendant's Notice of Removal of Civil Action, dated March 15, 2007).
2. On March 2, 2007, Plaintiffs' First Amended Complaint was filed with the Circuit Court. (see Plaintiffs' First Amended Complaint attached as Exhibit A to Defendant's Notice of Removal of Civil Action, dated March 15, 2007).
3. On March 15, 2007, Defendant City of Montgomery filed its Notice of Removal of Civil Action, along with other necessary documents, with this Court. (see Defendant's Notice of Removal of Civil Action, filed on March 15, 2007).

4. Rule 81(c), *Fed.R.Civ.P.*, sets forth in relevant part as follows:

“(c) Removed Actions. . . . In a removed action in which the defendant has not answered , the defendant shall answer or present the other defenses or objections available under these rules within 20 days after the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief upon which the action or proceeding is based, or within 20 days after the service of summons upon such initial pleading, then filed, or within 5 days after the filing of the petition for removal, whichever period is the longest. . .”

5. The Notice of Removal of Civil Action filed by Defendant City of Montgomery, establishes that Defendant did not file an Answer to either the original Complaint or the Amended Complaint prior to removal of this action to this Court. (see ¶ 5 of Notice of Removal).
6. Defendant City of Montgomery further acknowledges receipt of Plaintiffs’ First Amended Complaint on March 5, 2007, the date the Notice of Removal was filed with this Court. (see ¶ 6 of Notice of Removal).
7. Pursuant to Rule 81(c), *Fed.R.Civ.P.*, Defendant City of Montgomery’s Answer to the First Amended Complaint was due at the latest on or before March 26, 2007 - 20 days from receipt of Plaintiffs’ First Amended Complaint.
8. Defendant City of Montgomery did not file an Answer to the First Amended Complaint on or before March 26, 2007.
9. As a result of Defendant City of Montgomery’s failure to timely file an Answer in this action, Plaintiffs request the entry of a default judgment.

WHEREFORE Plaintiffs request that a default judgment be entered against Defendant City of Montgomery, Alabama as to liability on the pending claims, and that a jury trial be set on the

issue of damages, for the reasons set forth herein.

/s/ Jerry M. Blevins
JERRY M BLEVINS (BLE003)
Counsel for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of March, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following parties or counsel:

Kimberly O. Fehl, Esq.
Legal Department
City of Montgomery .
P.O. Box 1111
Montgomery, Alabama 36101-1111

/s/ Jerry M. Blevins
Jerry M. Blevins